

## PAPERWORK REDUCTION ACT SUBMISSION

### Rule 13h-1: Large Trader Reporting System

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#### SUPPORTING STATEMENT

##### A. Justification

##### 1. Need For Information Collection

Rule 13h-1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 (“Exchange Act”) establish a large trader reporting regime. The rule is intended to assist the Commission in identifying and obtaining certain baseline trading information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. In essence, a “large trader” is defined as a person whose transactions in national market system (“NMS”) securities equal or exceed (i) two million shares or \$20 million during any calendar day, or (ii) 20 million shares or \$200 million during any calendar month. The large trader reporting rule is designed to facilitate the Commission’s ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity, and to analyze significant market events for regulatory purposes. It also should enhance the Commission’s ability to detect and deter fraudulent and manipulative activity and other trading abuses, and should provide the Commission with a valuable source of useful data to study markets and market activity.

The identification, recordkeeping, and reporting requirements will provide the Commission with a mechanism to identify large traders and their affiliates, accounts, and transactions. Specifically, Rule 13h-1 will require large traders to identify themselves to the Commission and make certain disclosures to the Commission on Form 13H. Upon receipt of Form 13H, the Commission will issue a unique identification number to the large trader,<sup>1</sup> which the large trader will then provide to its registered broker-dealers. Registered broker-dealers will be required to maintain transaction records for each large trader, and will be required to report that information to the Commission upon request. Finally, certain registered broker-dealers subject to the Rule will be required to perform limited monitoring of their customers’ accounts for activity that may trigger the large trader identification requirements of Rule 13h-1.

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<sup>1</sup> The unique identification number would be called a Large Trader Identification Number or “LTID.”

2. Purpose of, and Consequences of Not Requiring, the Information Collection

In light of the dramatic changes to the securities markets, including increased volumes, volatility, and the growing prominence of large traders, the Commission has adopted a large trader reporting rule. The information collection is necessary to enhance the Commission's ability to identify large market participants, collect information on their trading, and analyze their trading activity. This information will allow the Commission to more effectively and efficiently monitor the impact of large trader activity on the securities markets.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

Rule 13h-1 will require large traders to self-identify to the Commission and inform their broker-dealers of their unique identification number and all accounts to which it applies. In addition, the rule will impose recordkeeping, reporting, and monitoring requirements on registered broker-dealers. The Commission believes that Rule 13h-1 will enhance the Commission's ability to obtain electronic data concerning the trading activity of large traders in an efficient manner utilizing an existing electronic reporting system, as discussed below. Moreover, the Commission believes that improvements in telecommunications and data processing technology may reduce any burdens associated with Rule 13h-1.

4. Efforts To Identify Duplication

The Commission, pursuant to Rule 17a-25,<sup>2</sup> currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets ("EBS") system to support its regulatory and enforcement activities. The Commission uses the EBS system to obtain securities transaction information to: (1) assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) conduct market reconstructions. The EBS system can be inefficient, however, for conducting large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods in large part because the EBS system does not collect critical information such as the time of the trade or the identity of the trader. To address this limitation with respect to large traders, the Commission believes that its large trader rule supplements the existing EBS system. The rule would not be duplicative of the existing EBS system because it would add two new fields, the time of the trade and the identity of the large trader, to the system.

5. Effects on Small Entities

The rule requirements will have minimal, if any, effect on small entities. Among other things, the rule will apply to "large traders," which is a term that captures persons

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<sup>2</sup> See 17 CFR 240.17a-25.

and entities with the resources and capital necessary to effect transactions in securities in substantial volumes relative to overall market volume in securities. The Commission does not believe that any small entities would be engaged in the business of trading, over the course of the applicable measuring period, in a volume that approaches the threshold levels. Further, for purposes of determining whether a person effects the requisite amount of transactions in NMS securities to meet the definition of “large trader,” paragraph (a)(6) of the rule excludes a limited set of transactions from the term “transaction” and the requirements of the rule in order to exempt infrequent trades that might otherwise trigger identification based on a single transaction.

In addition, the rule will apply to registered broker-dealers that serve large trader customers. Given the considerable volume in which a large trader would effect transactions, particularly in the case of high-frequency traders, registered broker-dealers servicing large trader customers or broker-dealers that are large traders themselves likely will be larger entities that have systems and capacities capable of handling the trading associated with such accounts. Accordingly, the Commission believes that no small entities will be affected by the rule.

#### 6. Consequences of Less Frequent Collection

Large traders would self-identify to the Commission on Form 13H through an initial filing that would be supplemented by mandatory annual updates. If any of the information contained in a Form 13H filing becomes inaccurate for any reason, large traders will be required to file an amended Form 13H. However, rather than file whenever any information needs to be changed, the rule only requires that amendments be filed on a quarterly basis. Separately, large trader trading data would be collected by the Commission from broker-dealers upon request on an as-needed basis. Together, the collection of this information would facilitate the Commission’s ability to identify large traders, assess the impact of large trader activity on the securities markets, to reconstruct their trading activity, and analyze significant market events for regulatory purposes. Less frequent collection of this information would undermine the purposes of the rule.

#### 7. Inconsistencies With Guidelines In 5 CFR 1320.5(d)(2)

The collection of information would not be inconsistent with 5 CFR 1320.5(d)(2).

#### 8. Consultations Outside the Agency

All Commission rule proposals are published in the Federal Register for public comment. The comment period for the release that discussed proposed Rule 13h-1 was 60 days.<sup>3</sup> The Commission received 87 comment letters on the proposal from investment advisers, broker-dealers, institutional and individual investors, industry trade groups, and other market participants. A number of these comment letters addressed PRA-related issues and are discussed below.

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<sup>3</sup> See Securities Exchange Act Release No. 61908 (Apr. 14, 2010); 75 FR 21456 (Apr. 23, 2010) (File No. S7-10-10).

There were 9 commenters<sup>4</sup> that believed the rule might be unduly burdensome based upon their understanding of how the rule might work. Some commenters stated that, in terms of large traders: 1) the large trader estimate of 400 large traders appeared to be underestimated;<sup>5</sup> and 2) the 20 hour initial burden estimate for calculating whether trading activity qualifies as triggering the large trader threshold, completing the initial Form 13H, obtaining an LTID from the Commission, and informing its registered broker-dealers and other entities of its LTID and the account to which it applies, was underestimated.<sup>6</sup> In terms of broker-dealers, one commenter stated that the broker-dealer estimate of 300 broker-dealers was underestimated and that therefore the ongoing monitoring burden of 4,500 burden hours/year was underestimated;<sup>7</sup> and 2) the initial broker-dealer recordkeeping costs of 133,500 burden hours was underestimated.<sup>8</sup>

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<sup>4</sup> See Letter to Elizabeth M. Murphy, Commission from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated June 16, 2010 (“MFA Letter”); Letter to Elizabeth M. Murphy, Commission, from Lucy Williams, Group Compliance Director, Prudential PLC, dated June 22, 2010 (“Prudential Letter”); Letter to Elizabeth M. Murphy, Commission, from Jennifer S. Choi, Associate General Counsel, Investment Adviser Association, dated June 22, 2010 (“IAA Letter”), Letter to Elizabeth M. Murphy, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated June 22, 2010 (“FIF Letter”); Letter to Elizabeth M. Murphy, Commission, from Anne Tuttle, EVP and General Counsel, Financial Engines, dated June 22, 2010 (“Financial Engines Letter”); Letter to Elizabeth M. Murphy, Commission, from Karrie McMillan, General Counsel, Investment Company Institute, dated June 22, 2010 (“ICI Letter”); Letter to Elizabeth M. Murphy, Commission, from Steven Hoffman, Vice President and Counsel, Wellington Management Company, LLP, dated June 22, 2010 (“Wellington Letter”); Letter to Elizabeth M. Murphy, Commission, from Lisa J. Bleier, Vice President and Senior Counsel, American Bankers Association, dated June 22, 2010 (“ABA Letter”); and Letter to Elizabeth M. Murphy, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 24, 2010 (“SIFMA Letter”).

<sup>5</sup> See MFA and SIFMA Letters.

<sup>6</sup> See Prudential, IAA, ICI, Financial Engines, Wellington, and ABA Letters.

<sup>7</sup> See FIF Letter.

<sup>8</sup> See SIFMA Letter.

a. Large Traders

i. Estimate of Number of Large Traders

One commenter who stated that the large trader estimate of 400 large traders was underestimated stated that the proposed thresholds may inadvertently capture more than 400 large traders.<sup>9</sup> A second commenter stated that the number was underestimated and that 400 option traders alone would qualify as large traders.<sup>10</sup>

Notably, the 400 estimate reflects the filing requirement provisions in Rule 13h-1(b)(3), which focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. As noted in the proposing release for the rule, the purpose of this focus is to narrow the number of persons that will need to self-identify and register on Form 13H as “large traders,” thereby allowing the Commission to identify the primary institutions that conduct a large trading business. Further, with regards to options traders, most, if not all, large trader control groups, as a natural consequence of their substantial trading and hedging activities, would involve persons that are active across a broad array of financial products trading in multiple venues, including cash equities and derivatives. The Commission’s estimate takes into account this fact and does not separately count the number of subsidiary traders that conduct an options business (or any other securities business) as separate from the number of large trader complexes.

Accordingly, the Commission continues to believe that the large trader estimate of 400 large traders is appropriate. This estimate reflects the proposed rule’s focus on reporting at the parent company level.

ii. Large Trader Initial Burden Estimate

Several commenters believed that the 20 hour initial burden estimate for large traders was underestimated. Three commenters stated that large trader organizations may need to develop systems in order to report at the parent level.<sup>11</sup> This burden, one commenter stated, would be increased for firms with complicated corporate structures.<sup>12</sup> In addition, this commenter noted that compliance with the rule would be more difficult for investment advisers in that they are required to maintain information barriers between different affiliates in their organization.<sup>13</sup> Another commenter noted that not all the Form

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<sup>9</sup> See MFA Letter.

<sup>10</sup> See SIFMA Letter.

<sup>11</sup> See Prudential, IAA, and ICI Letters.

<sup>12</sup> See IAA Letter.

<sup>13</sup> See id.

13H required data would be on the premises of the large trader and that, even if it were, this data would not be in automated form that is amenable to reporting on Form 13H.<sup>14</sup>

In connection with the potential need to develop new systems, five commenters stated that the Form 13H requirement to track account numbers would be unduly burdensome. These commenters noted that some large traders such as investment advisers can often have discretionary authority over hundreds of thousands of accounts.<sup>15</sup> These commenters stated that the requirement to track and update these accounts would be unduly burdensome.

The Commission addressed these comments by not adopting the proposed requirement to report account numbers on Form 13H. Instead, the Commission is requiring the large trader to disclose: (1) the names of broker-dealers with whom it has an account and (2) the types of brokerage services provided by those brokers.

As discussed in the adopting release, based on the comments received, the Commission agrees that its proposal underestimated the burden hour estimates for large traders to report account numbers on Form 13H. In particular, the Commission based its initial burden estimate for reporting account numbers on its understanding that all large traders have systems in place to readily track and manage their brokerage account numbers. While some affected entities are capable of doing so, this may not be the case for all large traders, particularly investment advisers, who may rely on software to intermediate the process of communicating with their brokers. For these entities, the information may not be in a form that is amenable to reporting on the Form without the use of third-party software. As noted by one commenter, however, many traders already maintain a list of approved broker-dealers in a readily accessible format, as they maintain approved broker-dealer lists in the ordinary course of business and have processes for adding and deleting broker-dealers as well as reviewing trades with a broker-dealer not on the approved list.<sup>16</sup>

Though the universe of broker-dealers that will be reported on the Form will likely be smaller than the number of brokerage accounts that would have been reported, the Commission based its initial burden estimate for reporting account numbers on its understanding that large traders had electronic access to this information in a format that could be uploaded to Form 13H. Some commenters, particularly investment advisers, indicated this may not be the case for some large traders.

As discussed in the adopting release, the Commission believes that requiring the reporting of a list of broker-dealers used, rather than all accounts held by each broker-dealer, brings the compliance burden for many large traders that are investment advisers

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<sup>14</sup> See ICI Letter.

<sup>15</sup> See, e.g., Wellington, ICI, and Financial Engines Letters.

<sup>16</sup> See ICI Letter.

in line with the Commission's original estimate of burdens on large traders for this provision generally. Consequently, the Commission noted that its estimated burdens on large traders under the Form are now in line with the requirements of the adopted Rule and Form.

a. Broker-Dealers

i. Estimate of Number of Broker-Dealers and Estimate of Ongoing Monitoring Burden

One commenter stated that the Commission's broker-dealer estimate of 300 broker-dealers was underestimated.<sup>17</sup> This commenter stated that the estimate should be closer to over 1,500 broker-dealers because there are many introducing brokers that would be affected at some level by the rule and would therefore incur both initial and ongoing costs. Thus, the commenter's assertion was based on a belief that, though the rule itself would not specifically require it, carrying broker-dealers might, in turn, require their introducing broker correspondents to establish policies and procedures to collect information on Unidentified Large Traders required by the rule to assist the clearing firms in complying with the requirements of the Rule that are applicable to them.

The Commission addressed this commenter's concern by clarifying, in the adopting release, the monitoring safe harbor provision of Rule 13h-1(f) and the limited scope intended of "other identifying information" that a broker-dealer would need to consider. The additional discussion in the adopting release on the intended scope of the monitoring safe harbor clarifies the limited nature of the monitoring duties and addresses the concerns raised by the commenter that the requirements are less pervasive than the commenter thought might be possible. Notably, the Commission reaffirmed that a broker-dealer's safe harbor policies and procedures would not need to take into account identifying information on the books and records of another broker-dealer.

In addition, the Commission believes that large traders, whose aggregate NMS securities transactions equal or exceed the identifying activity level, require sophisticated trade-processing capacities. Not all broker-dealers will have as customers, or will be in the business of effecting trades for, large traders. Accordingly, as clarified in the adopting release, all such entities are not expected to be impacted by the monitoring provisions of Rule 13h-1(f).

As discussed in the adopting release, the Commission's estimate of 300 broker-dealers was based on broker-dealer responses to FOCUS report filings with the Commission, and reflected the number of broker-dealers that the Commission believes would be reasonably likely to carry accounts for large traders or that would be reasonably likely to effect transactions directly or indirectly for a large trader where a non-broker-dealer carries the account.

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<sup>17</sup> See FIF Letter.

For these reasons, the Commission believes that its original burden estimate is appropriate. For example, one commenter, a large investment management firm and likely large trader, reported that it currently has “approximately 250 broker-dealers on our approved list for executing equity transactions.”<sup>18</sup> This number is lower than the Commission’s estimate of 300 affected broker-dealers.

ii. Estimate of Initial Broker-Dealer Recordkeeping Costs

One commenter stated that the build-out costs to update the EBS system would exceed the Commission’s estimate of 133,500 burden hours/year.<sup>19</sup> This commenter also stated that one of its member firms estimated it would cost \$3,000,000-\$4,000,000 to build out the EBS system as proposed by the rule, though the commenter did not provide any basis for the estimate or assumptions that were made with regards to the collection, reporting, and monitoring requirements of the Rule. This figure, which is an estimate of one effected entity that represents a single data point, is significantly higher than the Commission’s estimate of \$106,060.

This commenter stated that one of the major costs with implementing the recordkeeping requirement is that some broker-dealers do not have access to execution times. These broker-dealers, the commenter states, would need to devote considerable resources to updating EBS and gathering, processing, reviewing, and transmitting information.

Commenters did not express particular concern with the proposed requirement to record and report LTIDs, but rather focused on the transmission of execution time from the execution-facing systems to the clearing-facing systems which traditionally are utilized in the EBS process. Broker-dealers will face different challenges in capturing and reporting execution time information, depending on the sophistication of and resources they have previously devoted to their recordkeeping systems. Relevant factors might include, for example, the size of the entity, the nature, flexibility, and extent of their existing systems, and the business and other regulatory drivers for their technological strategies. As such, the Commission’s estimate involves an average calculation that accommodates a broad spectrum of broker-dealer EBS systems and considers that different firms would be affected to different degrees, including the possibility that some firms might spend more than the average. However, not all broker-dealers will face complexities involved with modifying non-integrated legacy systems to capture execution time, and some broker-dealers will not need to devote as many resources to those efforts as will others. For example, one commenter that represents a group that focuses on technological aspects of securities regulation expressed concern with the proposed monitoring requirements but did not address the costs associated with modifications to the EBS system. Rather, the commenter believed that broker-dealers could reasonably modify their systems to capture execution time within the proposed six-

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<sup>18</sup> See Wellington Letter.

<sup>19</sup> See SIFMA Letter.



month implementation period.<sup>20</sup> The Commission’s estimate is based on an aggregated figure that recognizes that different broker-dealers will need to invest different levels of resources based on the needs of their particular technology.

Accordingly, the Commission continues to believe that its initial 133,500 hour burden/year estimate for the one-time burden on registered broker-dealers to modify their existing EBS systems is reasonable and appropriate.<sup>21</sup> This figure assumes that, on average, each broker-dealer would have to devote 445 burden hours in order to develop, program, and test the enhancements to their existing systems to capture and report the additional fields of information (LTIDs and execution time).

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The information collection under Rule 13h-1 will be considered confidential subject to the limited exceptions provided by the Freedom of Information Act.<sup>22</sup>

11. Sensitive Questions

Not applicable. Questions of a sensitive nature are not asked.

12. Estimate of Respondent Reporting Burden

The Commission estimates that the “collection of information” requirements contained in Rule 13h-1 would apply to approximately 400 large traders<sup>23</sup> and 300 registered broker-dealers.<sup>24</sup>

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<sup>20</sup> See FIF Letter.

<sup>21</sup> The Commission notes that its estimate is in line with the burden estimates from Rule 17a-25.

<sup>22</sup> See 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

<sup>23</sup> While the Commission is not aware of a database that would allow the Commission to calculate the precise number of persons that would meet the definition of large trader, based on the Commission’s experience in this area, the Commission estimates that there would be 400 large traders subject to the proposed rule. The estimated number of large traders accounts for the filing requirement provision contained in Rule 13h-1(b)(3), which encourages large traders to report at the parent company level as opposed to reporting at the individual subsidiary level.

<sup>24</sup> The Commission estimate of 300 affected broker-dealers is based on broker-dealer responses to FOCUS report filings with the Commission.

a. Large Traders

Under the rule, large traders would be required to identify themselves to the Commission by filing a Form 13H and submitting annual updates, as well as updates on a quarterly basis if necessary to correct information that becomes inaccurate. Additionally, each large trader would be required to identify itself to each registered broker-dealer through which it effects transactions.

i. Initial Filing of Form 13H and Identifying as a Large Trader

The Commission estimates that the initial burden for a respondent to comply with the filing requirements would be 20 burden hours.<sup>25</sup> This figure includes the time to calculate whether its trading activity qualifies it as a large trader, complete the initial Form 13H with all required information, obtain a LTID from the Commission, and inform its registered broker-dealers and other entities of its LTID and the accounts to which it applies. In addition, this figure takes into account the Commission's understanding that large traders currently maintain systems that capture their trading activity. Therefore, the Commission believes that these existing systems would be sufficient without further modification to enable a large trader to determine whether it effects transactions for the purchase or sale of any NMS security for or on behalf of accounts over which it exercises investment discretion in an aggregate amount equal to or greater than the identifying activity level. Accordingly, the Commission estimates that the one-time aggregate burden for large traders would be approximately 8,000 burden hours.<sup>26</sup>

ii. Annual and Quarterly Reporting

On an ongoing basis, a respondent may have to file interim updates, and would have to update its Form 13H annually. The Commission estimates that the ongoing annualized burden for a respondent to fulfill its reporting obligations would be approximately 17 burden hours.<sup>27</sup> This estimate is based on the varied characteristics of

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<sup>25</sup> The Commission derived this burden estimate from the following estimate, which is based on the Commission's experience with and burden estimates for other existing reporting systems, including Rule 13f-1: (Compliance Manager at 3 hours) + (Compliance Attorney at 7 hours) + (Compliance Clerk at 10 hours) = 20 burden hours.

<sup>26</sup> The Commission derived this aggregate burden estimate from the following: (20 initial burden hours) x 400 respondents = 8,000 total initial burden hours.

<sup>27</sup> The Commission derived this burden estimate from the following estimates, which are based on the Commission's experience with and burden estimates for other existing reporting systems, including Rule 13f-1 and Rule 17a-25: (Compliance Manager at 2 hours) + (Compliance Attorney at 5 hours) + (Compliance Clerk at 10 hours) = 17 burden hours. Rule 17a-25 requires broker-

large traders and the nature and scope of the items that would be disclosed on Form 13H that would require updating and is based on the assumption that large traders would file one required annual update and three quarterly updates when information contained in the Form 13H becomes inaccurate. Accordingly, the Commission estimates that the ongoing annualized burden for large traders for complying with the rule would be 6,800 burden hours for all large trader respondents.<sup>28</sup>

iii. Total Large Trader Burden

The total annual burden for all large trader respondents will be 8,000 hours in the first year, and 6,800 hours for each subsequent year.

For purposes of submitting this request to OMB, the Commission has averaged these hourly burdens to determine the estimated annual burden hours required to comply with proposed Rule 13h-1. Accordingly, based on the Commission's estimates for the initial annual and ongoing annual burden hours the total average annual burden hours required to comply with Rule 13h-1 will be 7,200 hours over a three year period. The Commission derived the estimated total hours figure from the following: (8,000 hours (aggregate initial annual burden) + (6,800 hours (aggregate ongoing annual burden) x 2 years)) / 3 years.

b. Registered Broker-Dealers

Under the rule, registered broker-dealers would be required to comply with recordkeeping, monitoring, and reporting requirements.

i. Recordkeeping

The Commission believes that the burden of the rule for individual registered broker-dealers would likely vary due to differences in their recordkeeping systems. The Commission estimates that all registered broker-dealers that either have a client base that includes large traders and Unidentified Large Traders<sup>29</sup> or that are themselves large traders, would be required to make modifications to their existing systems to capture the additional data elements that are not currently captured by systems that are used in connection with the existing EBS system, including, for example, the LTID number.

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dealers to disclose information that is very similar in scope and character to the information required under the proposed rule.

<sup>28</sup> The Commission derived this aggregate burden estimate from the following: (17 annual burden hours) x 400 respondents = 6,800 total ongoing burden hours.

<sup>29</sup> Rule 13h-1(a)(9) defined the term "Unidentified Large Trader" to mean each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of the rule that a registered broker-dealer knows or has reason to know is a large trader.

## 1. Initial

The Commission estimates that the one-time, initial burden for a respondent to conduct system development, including re-programming and testing of the systems to comply with the rule, would be 445 burden hours.<sup>30</sup> This figure is based on the estimated number of hours for initial system development and implementation, including software development, taking into account the fact that new data elements are required to be captured and must be available for reporting to the Commission as of the morning following the day on which the transactions were effected. Because broker-dealers already capture, pursuant to Rule 17a-25 and the existing EBS system, most of the data that Rule 13h-1 would capture, the Commission does not expect broker-dealers to incur any hardware costs. Accordingly, the Commission estimates that the aggregate one-time, initial burden to comply with the rule would be 133,500 hours.<sup>31</sup>

## 2. Ongoing

The Commission believes that the ongoing annualized expense for the recordkeeping requirement for registered broker-dealers would not result in a burden, as registered broker-dealers already are required to provide to the Commission almost all of the information for all of their customers pursuant to Rule 17a-25 under the Exchange Act. Once a registered broker-dealer's system is revised to capture the additional fields of information, the Commission does not believe that the additional fields would result in any ongoing annualized expense beyond what broker-dealers already incur under Rule 17a-25 and the existing EBS system.

## 3. Total Recordkeeping Burden

The total annual recordkeeping burden will be 133,500 hours in the first year, and 0 hours for each subsequent year.

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<sup>30</sup> The Commission derived the total estimated burden from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1 and Rule 17a-25: (Computer Ops Dept. Mgr. at 30 hours) + (Sr. Database Administrator at 25 hours) + (Sr. Programmer at 150 hours) + (Programmer Analyst at 100 hours) + (Compliance Manager at 20 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 50 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 35 hours) = 445 burden hours. As noted in the release, the Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our hourly burden estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs.

<sup>31</sup> The Commission derived this estimate from the following: (445 initial burden hours) x 300 respondents = 133,500 total initial burden hours.

For purposes of submitting this request to OMB, the Commission has averaged these hourly burdens to determine the estimated annual burden hours required to comply with the proposed rule. Accordingly, based on the Commission's estimates for the initial annual and ongoing annual burden hours the total average annual burden hours required to comply with Rule 13h-1 will be 44,500 hours over a three year period. The Commission derived the estimated total hours figure from the following: (133,500 hours (aggregate initial annual burden) + (0 hours (aggregate ongoing annual burden) x 2 years)) / 3 years = 44,500.

## ii. Monitoring

In addition to requiring registered broker-dealers to maintain records of account transactions, the rule also requires certain registered broker-dealers to perform limited monitoring of customers' trading. In particular, the rule will require broker-dealers to monitor to help ensure compliance by large traders with the self-identification requirements of the rule. Paragraph (e) of the rule will require certain broker-dealers to maintain and report to the Commission certain information about all transactions effected by Unidentified Large Traders.

The Commission acknowledges that the duty to monitor would impose burdens on broker-dealers. To reduce the monitoring burden, the Commission has a safe harbor provision for the monitoring duty. Specifically, registered broker-dealers would be deemed to not know or to have no reason to know that a person is an Unidentified Large Trader if: (1) it does not have actual knowledge that a person is a large trader; and (2) it has established policies and procedures reasonably designed to identify persons who have not complied with the identification requirements of the rule, treats any such person as an Unidentified Large Trader, and informs such person of its potential obligations under the rule.<sup>32</sup> For purposes of determining whether a registered broker-dealer has reason to know that a person is large trader, a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.

### 1. Initial

The Commission estimates that the one-time, initial burden for a respondent to comply with the monitoring requirements by establishing a compliance system to detect and identify Unidentified Large Traders as well as monitoring in the first year would be 70 burden hours.<sup>33</sup> This figure is based on the estimated number of hours to establish

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<sup>32</sup> See Rule 13h-1(f).

<sup>33</sup> The Commission derived the estimated total burden from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1: (Sr. Programmer at 10 hours) + (Compliance Manager at 10 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Director of Compliance at 2 hours) + (Sr. Computer Operator at 8 hours) = 70 burden

policies and procedures reasonably designed to assure compliance with the identification requirements of the rule. Accordingly, the Commission estimates that the aggregate initial, one-time burden to comply with the monitoring requirements is 21,000 hours.<sup>34</sup>

## 2. Ongoing

The Commission estimates that the ongoing annualized burden to a respondent for the monitoring requirements of the rule, including the requirement to inform Unidentified Large Traders of their potential obligations under the rule, would be approximately 15 burden hours per year.<sup>35</sup> Accordingly, the Commission estimates that the ongoing annualized burden for all respondents for the monitoring requirements would be 4,500 burden hours.<sup>36</sup>

## 3. Total Monitoring Burden

The total annual monitoring burden will be 21,000 hours in the first year, and 4,500 hours for each subsequent year.

For purposes of submitting this request to OMB, the Commission has averaged these hourly burdens to determine the estimated annual burden hours required to comply with the rule. Accordingly, based on the Commission's estimates for the initial annual and ongoing annual burden hours the total average annual burden hours required to comply with Rule 13h-1 will be 10,000 hours over a three year period. The Commission derived the estimated total hours figure from the following: (21,000 hours (aggregate initial burden) + (4,500 hours (aggregate ongoing annual burden) x 2 years)) / 3 years = 10,000.

### iii. Reporting

The rule also would require registered broker-dealers to report large trader transactions to the Commission upon request. The Commission believes that this collection of information would not involve any substantive or material change in the

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hours. Rule 13f-1, like Rule 13h-1, requires monitoring of a certain trading threshold.

<sup>34</sup> The Commission derived this estimate from the following: (70 initial burden hours) x 300 respondents = 21,000 total initial burden hours.

<sup>35</sup> The Commission derived the estimated total burden from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1 and Rule 17a-25: (Compliance Attorney at 15 hours) = 15 burden hours. Rule 13f-1, like Rule 13h-1, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

<sup>36</sup> The Commission derived this estimate from the following: (15 annual burden hours) x 300 respondents = 4,500 total ongoing burden hours.

burden that already exists as part of registered broker-dealers providing transaction information to the Commission in the normal course of business, particularly in connection with the existing EBS system.<sup>37</sup> However, the Commission notes that the information would need to be available for reporting to the Commission on a next-day basis, versus the 10 business day period that is generally associated with an EBS request for data.<sup>38</sup> Nevertheless, once the electronic recordkeeping system is in place to capture the information, where such system is specifically designed and built to furnish the information within the next-day time period specified in the proposal, the Commission believes that the provision of such information to the Commission would result in minimal additional burden. The Commission also clarified in the rule that, when it requests large trader transaction data, broker-dealers must submit the information to the Commission no later than the day and time specified in the request for transaction information, which will normally be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.

Although it is difficult to predict with certainty the Commission's future needs to obtain large trader data, taking into account the Commission's likely need for data to be used in market reconstruction purposes and investigative matters, the Commission estimates that it would likely send 100 requests for large trader data per year to each registered broker-dealer subject to the rule.<sup>39</sup> The Commission estimates that it would take a registered broker-dealer 2 hours to comply with each request, considering that a broker-dealer would need to run the database query of its records, download the data file, and transmit it to the Commission. Accordingly, the annual reporting hour burden for a respondent is estimated to be 200 burden hours (100 requests x 2 burden hours/request = 200 burden hours).<sup>40</sup> The annual aggregate annual reporting burden is estimated to be

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<sup>37</sup> See 17 CFR 240.17a-25.

<sup>38</sup> See Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (File No. S7-12-00) (17a-25 adopting release).

<sup>39</sup> Compared to the EBS system, where the Commission sent 5,168 electronic blue sheets requests between January 2007 and June 2009, the Commission preliminarily expects to send fewer requests for large trader data, in particular because the Commission preliminarily expects that a request for large trader data would be broader and encompass a larger universe of securities and a longer time period than would be the case for the typically more targeted EBS requests it sends to broker-dealers.

<sup>40</sup> The Commission derived the estimated total annual burden based on the Commission's experience with, and burden estimates for, other existing reporting systems, including Rule 17a-25. The Commission estimated that each broker-dealer who electronically responds to a request for data in connection with Rule 17a-25 and the EBS system spends 8 minutes per request. See Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836, 35841 (July 9, 2001) (S7-12-00). Unlike EBS, under Rule 13h-1, a broker-dealer would also be required to report data on Unidentified Large Traders. The Commission therefore

60,000 hours (200 annual burden hours x 300 respondents = 60,000 aggregate burden hours).

c. Total Broker-Dealer Burden

For the first year, the estimated aggregate annual burden hours for broker-dealers to comply with the Rule 13h-1 are 214,500 hours. The Commission derived the estimated total hours figure from the following: (133,500 hours (estimated total initial burden for recordkeeping requirement) + 21,000 hours (estimated total initial burden for the monitoring requirement) + 60,000 hours (estimated total burden for reporting) = 214,500 total burden hours).

For subsequent years, the estimated aggregate annual burden hours required to comply with Rule 13h-1 are 64,500. The Commission derived the estimated total hours figure from the following: (4,500 hours (estimated total ongoing burden for the monitoring requirement) + 60,000 hours (estimated total burden for reporting) = 64,500 total burden hours).

For purposes of submitting this request to OMB, the Commission has averaged these hourly burdens to determine the estimated annual burden hours required to comply with the rule. Accordingly, based on the Commission's estimates for the initial annual and ongoing annual burden hours of complying with Rule 13h-1, the total average annualized burden hours are estimated to be 114,500 hours over a three year period. This figure is derived from the following: (214,500 hours (aggregate initial annual burden) + (64,500 hours (aggregate ongoing annual burden) x 2 years)) / 3 years).

13. Estimate of Total Annualized Cost Burden

The Commission believes that compliance with the rule does not require any capital or start up costs, or any recurring annual external operating and maintenance costs separate from the wages, salaries, or fees represented in the estimated hourly burdens discussed above.

14. Estimate of Cost to Federal Government

There would be no additional costs to the Federal Government.

15. Explanation of Changes in Burden

Not applicable. Rule 13h-1 would be a new rule.

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believes that the time to comply with a request for data under the rule could take longer than would a similar request for data under the EBS system, as a broker-dealer likely would take additional time to review and report information on any Unidentified Large Traders, including the additional fields of information required by paragraph (d)(3) of the rule.



16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Explanation as to Why Expiration Date Will Not Be Displayed

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementation of such methods reduce the burden or improve the accuracy of results.